IN THE

Supreme Court of the United States

OCTOBER TERM 1978

No. 78-91

R. W. JONES, SR., *et al.*,
Petitioners,

v.

CHARLES T. WOLF, *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

BRIEF FOR THE PETITIONERS

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OPINIONS BELOW

The unreported opinion of the Superior Court of Bibb County, Georgia, is reprinted at pages 1a-10a of the Appendix to the Petition for a Writ of Certiorari ("Pet. App."). The opinion of the Supreme Court of Georgia is reported at 241 Ga. 208, 243 S.E.2d 860 (1978), and is reprinted at Pet. App. 11a-16a.

JURISDICTION

The judgment of the Supreme Court of Georgia was entered on April 4, 1978, and its order denying a timely petition for rehearing was entered on April 19, 1978. The Petition for a Writ of Certiorari was filed on July 17, 1978, and was granted on October 10, 1978. The jurisdiction of this Court rests on 28 U.S.C. § 1257(3).

QUESTION PRESENTED

Whether, in resolving this controversy between two competing factions of a local church, the civil courts were required by the First Amendment to defer to the pertinent hierarchical church court decision concerning which of the two factions constitutes the "true congregation" of that local church.

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const., Amend. I:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof * * *.

U.S. Const., Amend. XIV, Sec. 1:

* * * nor shall any State deprive any person of life, liberty, or property, without due process of law * * *.

STATEMENT OF THE CASE

This is a religious controversy concerning which of two factions constitutes the "true congregation" of the Vineville Presbyterian Church in Macon, Georgia. Resolution of the controversy affects, among other things, property rights—control and use of the assets of the named church. The controversy was presented to the appropriate church court (the Augusta-Macon Presbytery), which determined that the group represented by petitioners constitutes the "true congregation." Thereafter, however, the civil courts of Georgia reviewed and rejected the church court's decision in the matter, declared the group represented by respondents to be the true congregation of the Vineville Presbyterian Church, and awarded the latter use and control of the church's property. The controversy is now before this Court to determine whether the actions of the Georgia civil courts violated the First Amendment, as applied to the states through the Fourteenth Amendment.

The facts essential to a resolution of the question presented are not in dispute. They were the subject both of a stipulation between the parties in the Georgia trial court and of detailed findings by that court, and they can be briefly summarized.

The Vineville Presbyterian Church ("VPC") was organized in 1904, and, in that same year, upon its petition VPC was established as a Local Member-Unit of the Augusta-Macon Presbytery of The Presbyterian Church in the United States ("TPCUS"). Joint Appendix ("JA") 316. TPCUS is organized in a hierarchical, or connectional, form of government, as contrasted with a congregational

form. Pet. App. 3a, 6a.[1] Its hierarchical structure was found by the Georgia trial court to be as follows:

> Generally, TPCUS is organized so that a Local Unit is governed by its Session; the Sessions of the Local Church are governed by what is known as a Presbytery which governs several Local Church Units in a particular area; the Presbytery is governed by a Synod which is over all Local Units and Presbyteries within a State; and the Synods are governed by the General Assemblies [sic] which in turn governs all Local Church Units, Presbyteries and Synods in the United States.
> [Pet. App. 3a-4a.]

The details of the various duties and powers of the several levels within the described church hierarchy, and the procedures by which each implements its duties and powers, are set forth in *The Book of Church Order*. JA 11.[2] As will be later described, it was

[1] These two distinct forms of church government, long recognized and understood by this Court, need not be detailed here. Mr. Justice Miller succinctly distinguished them for the Court in *Watson* v. *Jones*, 80 U.S. (13 Wall.) 679, 722-723 (1871), defining a local congregational church as one "which, by the nature of its organization, is strictly independent of other ecclesiastical associations, and so far as church government is concerned, owes no fealty or obligation to any higher authority," and a local hierarchical church as "a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control more or less complete, in some supreme judicatory of the whole membership of that general organization." It is unquestioned that VPC is in the latter category.

[2] The edition of *The Book of Church Order* which was in effect at the time of the instant religious controversy, and which governed the proceedings in both the church tribunal and the Georgia civil courts, was the Fourteenth Printing (1972). *See* JA 316; Pet. App. 3a. This edition is reprinted at JA 11 - 227.

pursuant to the provisions of that book that the controversy now before this Court was adjudicated by the appropriate church court, the Augusta-Macon Presbytery.

On May 27, 1973, the VPC membership split into two factions, represented here by petitioners and respondents. On that date, 165 members (respondents) voted to adopt a resolution declaring that

> The Congregation of the Vineville Presbyterian Church, Inc. desires to be at peace and to proclaim the Good News of Jesus Christ, adhering closely to the Bible as the infallible Word of God, and to the doctrines originally stated in the Westminster Confession of Faith, and * * * desires to separate with our property * * * from Augusta-Macon Presbytery and the Presbyterian Church in the United States * * * [and] therefore * * * resolve[s] that [VPC] does now declare itself to be an independent and self-governing church, * * * [and] further resolve[s] that any and all connections, control, jurisdiction, and/or oversight of said Augusta-Macon Presbytery and any other judicatory or commission of the Presbyterian Church in the United States with the Vineville Presbyterian Church, Inc. be and the same hereby are severed and dissolved. [JA 228.]

Ninety-four members (petitioners) voted against adoption of the resolution. JA 231. That same day, respondents' group officially reported the congregational division to the Augusta-Macon Presbytery, stating:

> The reasons for the action of the Congregation are well known to the Presbytery and to the denomination. The General Assembly of the Presbyterian Church in the United States has demonstrated repeatedly its arbitrary disregard of its covenant to preserve the purity and peace of the Church. [JA 233.]

The pastor also sent official notification to the Presbytery. JA 234.

In response to the split within VPC, the Augusta-Macon Presbytery, acting directly in accordance with *The Book of Church Order*, appointed a Commission to consider and, if possible, resolve the dispute. That Commission subsequently issued a written ruling declaring that petitioners' group constituted "the true congregation of Vineville Presbyterian Church" and withdrawing from respondents' group (which included the pastor) "all authority to exercise office derived from the Presbyterian Church in the United States." JA 235. Respondents did not appeal the Presbytery's decision in the controversy to any higher church tribunal, as they could have done pursuant to the governing church rules. *The Book of Church Order* §§ 113-117, JA 126-132.[3]

[3] It is not disputed, nor could it be, that the Presbytery was the appropriate court to review the schism within VPC, *The Book of Church Order* §§ 13-1, 14-5, JA 47, 49-50; that the schism was effectively brought within that court's supervision, *id.* at § 14-6, JA 50; that determination of VPC's "true congregation" was within the power of that court, *id.* at §§ 16-7, 111-3, JA 55-56, 124-125; and that the appointed Commission had full authority to exercise that power, *id.* at § 19-2, JA 62. Indeed, the Presbytery's adjudication of the "true" and rightful members of VPC constituted the very essence of that court's ecclesiastical authority:

> Church courts possess the right of requiring obedience to the laws of Christ. Hence, they admit those qualified to

(footnote continued)

Notwithstanding this final decision rendered by the church court, respondents thereafter struck the names of petitioners' group from the rolls of VPC, JA 318-319, and, in addition, united themselves with the Presbyterian Church in America, a separate Presbyterian denomination wholly unconnected with TPCUS. JA 318. Moreover, at all times since May 27, 1973, respondents have retained possession and control of VPC's property and have completely excluded petitioners' group from any use of that property in practicing their religion as a local unit of TPCUS. JA 318.

Title to the VPC property originally was acquired by recorded conveyance instruments. These instruments in one case transferred the property directly to VPC, JA 249, and in all other cases transferred it to trustees of VPC who were directed to hold the property for the "use, benefit and behoof" of VPC. *E.g.*, JA 248, 252. In a majority of these instruments, specific authorization was given to the trustees to deal with the property, but to do so "by complying with the rules and regulations of the Church only." JA 254, 257, 262, 265, 269.

(footnote continued)

> sealing ordinances and to their respective offices and they exclude the disobedient from their offices or from sacramental privileges; but the highest censure to which their authority extends is to cut off the contumacious and impenitent from the congregation of believers. [*Id.* at § 14-3(4), JA 49.]

Furthermore, numerous other provisions of the church rules and regulations in force at the time of the dispute in the instant case emphasize that, in the event of a dispute, it is within the jurisdiction of the church courts to determine the identity of the true congregation. These rules are set out in more detail in the Brief of Amicus Curiae The Presbyterian Church in the United States.

Thus, since there was no question that the property was required to be held for the use and benefit of VPC, since there was also no question that petitioners had been determined by the appropriate church court to be the true congregation of VPC, and, finally, since respondents refused to honor that church court's decision, petitioners were obliged to file suit to protect and enforce their rights, including the use of VPC's property. Simply put, "[t]his case belongs to a class * * * in which one of the parties to a controversy, essentially ecclesiastical, resorts to the judicial tribunals of the State for the maintenance of rights which the church has * * * found itself unable to protect." *Watson* v. *Jones*, 80 U.S. (13 Wall.) 679, 713 (1871).

Petitioners' equitable action was brought in the Superior Court of Bibb County, Georgia, requesting a declaratory judgment that petitioners were entitled to the use of the VPC property, and an injunction preventing respondents from further excluding petitioners from the property. JA 2-9.[4] That court, after reviewing the stipulated facts previously described, stated that it had found "nothing in the deeds, the applicable Georgia statutes regarding religious corporations, TPCUS Book of Church Order or Discipline, or the Corporate Charter of the VPC to indicate any express or implied trust in favor of any

[4] Petitioners initially brought this action in federal court, since they assumed that respondents were relying upon a Georgia statute that petitioners claimed was unconstitutional. However, when respondents stipulated that they were in no way relying upon this statute, the federal court dismissed for lack of jurisdiction, holding that the basic dispute arose under state property law, even though federal constitutional issues ultimately might arise. *See Lucas* v. *Hope*, 515 F.2d 234, 236-237 (5th Cir. 1975), *cert. denied*, 424 U.S. 967 (1976).

group other than the local congregation of VPC." Pet. App. 9a. The court then concluded "as a matter of law that legal title to all the church property of VPC is vested in the local church which is represented by defendants." Pet. App. 9a. The court did not explain how it reasoned from the proposition that the "church property of VPC is vested in the local church" — an issue that was never in doubt and which all parties had conceded — to the conclusion that the "local church * * * is represented by [respondents]." Neither did the court suggest how it constitutionally could reach the latter conclusion in the face of a contrary decision which it found as a fact to have been rendered by the church court.

On appeal, notwithstanding petitioners' arguments that the First Amendment required deference to the church court's decision regarding which group represented VPC, the Supreme Court of Georgia affirmed the trial court. That appellate court, as had the lower court, simply reviewed the deeds, state statutes, and *The Book of Church Order* to determine whether the general church (TCPUS) had any enforceable property rights in the local church's (VPC's) assets. Finding no such property rights expressed or implied in those documents, and confirming the trial court's view that "more than a mere connectional [hierarchical] relationship between the local and general church must exist to give rise to property rights in the general church," Pet. App. 15a-16a, the state supreme court pronounced title to be in the local church and respondents to be the representatives of that church. Pet. App. 16a.

As had the lower court, the state supreme court purported to premise its decision on "neutral

principles of law." Pet. App. 7a-9a, 13a-15a. Yet that court, like the lower court, failed to identify which "neutral principles" it was relying on either to determine the "true" representatives of the local church, or to reject the contrary determination of that same issue by the governing hierarchical church court.

SUMMARY OF ARGUMENT

The only disputed issue in this case is and has been which of two competing factions of the Vineville Presbyterian Church — the group represented by petitioners or the group represented by respondents — constitutes the "true congregation" of that church. Since the church's property was held for the use and benefit of its members, whichever group was deemed to be the "true" membership would, as a matter of course, be entitled to control the property.

Since VPC is a member of a denomination which follows a hierarchical polity, it is subject to the decisions of church courts regarding such ecclesiastical issues as the identification of a member-church's "true congregation." Here, the appropriate church court determined that petitioners represented VPC's "true congregation." That determination was constitutionally binding upon the civil courts in the subsequent lawsuit brought to determine the correlative rights of the parties, including which group was entitled to the church property.

The Georgia courts violated the First Amendment by redetermining the identity of VPC's "true" congregation and, on the basis of that identification, awarding control of VPC's property to respondents. Civil courts may not directly reject a

church court's decision concerning an ecclesiastical issue, nor indirectly overrule it by substituting their own judgment on that ecclesiastical issue under the guise of "neutral principles."

Where, as in this case, a hierarchical church court decision can be identified which resolves an ecclesiastical matter at issue in the civil court dispute, the application of "neutral principles" to resolve that same matter is inappropriate and unconstitutional, for it is as much a rejection of the church's decision as an outright overruling of that decision. Furthermore, assuming *arguendo* that "neutral principles" may constitutionally be applied to overrule a church court resolution of an ecclesiastical issue—a conclusion which we strongly dispute—in this case there were no such "neutral principles" available by which to redetermine that issue. Thus, the Georgia courts violated the First Amendment by deciding that respondents are the true congregation of VPC.

ARGUMENT

I.

THE GEORGIA CIVIL COURTS WERE CONSTITUTIONALLY REQUIRED TO ACCEPT THE CHURCH COURT'S DECISION THAT PETITIONERS ARE THE "TRUE CONGREGATION" OF THE VINEVILLE PRESBYTERIAN CHURCH.

There is no dispute in this case that The Presbyterian Church in the United States is a hierarchical, or connectional, religious organization; that the Vineville Presbyterian Church was, on the day

this controversy arose, a Local Member-Unit of that organization; and that, as a Local Member-Unit, VPC, along with its members, was subject to the authority of the various hierarchical church courts within TPCUS. There is also no dispute that on May 27, 1973, a doctrinal division occurred within the membership of VPC; that the division was appropriately reviewed by a duly-appointed Commission of the Augusta-Macon Presbytery; and that it was the decision of that ecclesiastical tribunal that petitioners constitute the "true congregation" of VPC. Respondents did not appeal that decision. They have not attacked the propriety of the procedure followed, and have never contended that the church decision was tainted or improper.

In petitioners' view, these undisputed facts should have been sufficient to foreclose any secular inquiry regarding the identity of VPC's authorized representatives. But the undisputed facts were not sufficient for the courts below. On September 29, 1977, the Superior Court of Bibb County, Georgia, overruled the Presbytery's decision, finding that "VPC * * * is represented by [respondents]." Pet. App. 9a. On April 4, 1978, the Supreme Court of Georgia approved this conclusion, stating that "the local church congregation [is] represented by the [respondents]." Pet. App. 16a. These civil court redeterminations of an ecclesiastical matter already resolved by the governing church tribunal are unconstitutional.

This Court has declared, over and over again, that once the appropriate church court in a hierarchical religious organization has resolved an ecclesiastical issue, that resolution binds the civil

courts. This rule was first announced in *Watson* v. *Jones*, *supra*:

> [T]he rule of action which should govern the civil courts * * * is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these [hierarchical] church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them. [80 U.S. at 727.]

In *Watson*, as here, the issue was which of two competing factions should be recognized as the true congregation of a particular local church. *Id.* at 697, 714.[5] There, as here, the local church was a member-unit of a hierarchical religious association, *id.* at 681-683; and there, as here, when civil litigation was instituted to claim control of the church property, the appropriate church court had already decided which of the two factions constituted the true congregation. *Id.* at 691-694. Nevertheless, the Court of Appeals of Kentucky decided for the other faction, and thus "ended by overruling the decision of the highest judicatory of that church * * * and substituting its own judgment for that of the ecclesiastical court * * *." *Id.* at 734. This Court declared:

> [I]t would * * * lead to the total subversion of such religious bodies [hierarchical churches], if any one aggrieved by one of their decisions could appeal to the secular courts and have

[5] *See Kedroff* v. *Saint Nicholas Cathedral*, 344 U.S. 94, 112-113 (1952).

> them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for. [*Id.* at 729.]

The principle that church court decisions on ecclesiastical matters must be accepted by the civil courts was repeated in *Gonzales* v. *Archbishop*, 280 U.S. 1, 16 (1929), was raised to constitutional dimensions in *Kedroff* v. *Saint Nicholas Cathedral*, *supra*, 344 U.S. at 115-116, and was given categorical reaffirmation by this Court only two years ago in *Serbian Eastern Orthodox Diocese* v. *Milivojevich*, 426 U.S. 696, 724-725 (1976):

> [T]he First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding upon them.

The *Serbian* Court made plain that decisions of ecclesiastical tribunals bind the civil courts not only as to matters of faith, discipline, and doctrine, but also as to disputes touching church government, administration, and polity. 426 U.S. at 717, 721-722. The dispute in the instant case surely fits within

these areas. It was identification of the true congregation and its ruling elders that was at issue in *Watson*, the selection of a chaplain in *Gonzales*, and the organization of a diocese and naming of a bishop in *Serbian*. In the latter case, this Court held that there was no dispute that "questions of church discipline and the composition of the church hierarchy are at the core of ecclesiastical concern; the bishop of a church is clearly one of the central figures in such a hierarchy and the embodiment of the church within his Diocese * * *." *Id.* at 717.

Here we deal not with the "embodiment" of the church, but with the very body of the church itself, and the essence of its organization: the designation of those who may share its membership. We take it to be undisputed that such a determination is similarly "at the core of ecclesiastical concern," and that it, too, is a matter beyond the jurisdiction or competence of the civil courts. As this Court has said: "Our only judicial power in the case arises from the conflicting claims of the parties to the church property and the use of it. We cannot decide who ought to be members of the church, nor whether the excommunicated have been justly or unjustly, regularly or irregularly cut off from the body of the church." *Watson* v. *Jones*, *supra*, 80 U.S. at 730.[6]

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[6] *Accord*, *Bouldin* v. *Alexander*, 82 U.S. (15 Wall.) 131, 139-140 (1872):

> [W]e have no power to revise or question ordinary acts of church discipline, or of excision from membership. * * * [W]e cannot decide who ought to be members of the church, nor whether the excommunicated have been regularly or irregularly cut off. We must take the fact of excommunication as conclusive proof that the persons exscinded are not members.

The Augusta-Macon Presbytery has determined —conclusively—that respondents are not members of and do not represent the Vineville Presbyterian Church, and that, in fact, petitioners are the only true congregation of that church. It being agreed that VPC owns the property at issue here and that such property is held for the use and benefit of VPC's members, respondents should have acceded to petitioners' claims to that property.

But respondents have refused to do so. They have not accepted the Presbytery's judgment. They have declared themselves independent of TPCUS authority, JA 228, 233, and have joined a different hierarchical church, JA 318. Petitioners do not challenge respondents' unquestioned privilege to leave VPC; but respondents cannot at the same time declare themselves "the church," retain the church property, and exclude petitioners from their own use of the church and its religious processes. That much at least was decided by this Court as early as *Watson*, and it should have been followed by the Georgia civil courts:

> [T]he appellants in the case presented to us have separated themselves wholly from the church organization to which they belonged when this controversy commenced. They now deny its authority, denounce its action, and refuse to abide by its judgments. They have first erected themselves into a new organization, and have since joined themselves to another totally different, if not hostile, to the one to which they belonged when the difficulty first began. Under any of the decisions which we have examined, the appellants, in their present position, have no right to the property,

> or to the use of it, which is the subject of this suit. [80 U.S. at 734.]

Having concluded that the property in dispute belonged to the membership of VPC, and having been apprised that the appropriate ecclesiastical tribunal had determined that membership to be represented by petitioners, the lower civil courts' role was at an end. Their decision to go further—to redetermine the identity of VPC's true representatives and overrule the church court's judgment on that issue—violated the First Amendment. That decision should be reversed by this Court.

II.

THE GEORGIA CIVIL COURTS WERE NOT PERMITTED TO REJECT THE CHURCH COURT'S DECISION UNDER THE GUISE OF "NEUTRAL PRINCIPLES."

Respondents and the lower civil courts do not so much disagree with the foregoing discussion as they ignore it. Thus, as respondents broadly conceded in their opposition to the Petition for a Writ of Certiorari:

> [T]he present law in Georgia concerning church property disputes places no significance on the actions of any church judicatories * * *. [Brief for Respondents in Opposition at 2.]

That characterization fairly states the Georgia Supreme Court's treatment of the Presbytery's decision; indeed, that court attributed so little significance to the ecclesiastical tribunal's resolution of the matter

at issue that that resolution was only fleetingly cited and then not even discussed in the court's opinion.[7]

The explanation for this lies in the Georgia courts' misapplication of a doctrine developed by this Court as an appropriate method of resolving some church property disputes under limited—and apparently misunderstood—circumstances. The doctrine, referred to as "neutral principles of law," was first mentioned by this Court in *Presbyterian Church in the United States* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1968) (*"Hull"*), and its application was given sanction in *Maryland and Virginia Eldership of the Churches of God* v. *Church of God at Sharpsburg*, 396 U.S. 367 (1970) (*"Sharpsburg"*). Because a misinterpretation of these two cases underlies the lower courts' decisions herein, it will be helpful to recite those cases' facts and holdings.

Hull, *supra*, presented a hierarchical church (TPCUS, as in the instant case) dispute between the general church and certain of its local member-churches over which was entitled to the use of the local churches' property. The controversy was precipitated by the local churches' attempt to withdraw from the general church, and the latter's attempt then to take possession of the local churches' property. 393 U.S. at 441-443. The Georgia courts ruled as a matter of state law that the property was held subject to an implied trust in favor of the general church, *so long as* the latter did not depart from its established doctrine. Hence, in order to

[7] The court ignored that church court decision despite petitioners' repeated reliance on it in the briefs filed below. *See, e.g.*, Brief for Appellants, filed Dec. 8, 1977, at 10-11, 13-14, 15.

resolve the property dispute, the Georgia courts were obliged to determine whether a departure from doctrine had occurred—a matter "at the very core of a religion." *Id.* at 450. "Plainly," said this Court, "the First Amendment forbids civil courts from playing such a role." *Id.* Consequently, this Court reversed the Georgia Supreme Court's decision, stating in pertinent part:

> [T]he First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes. It is obvious, however, that not every civil court decision as to property claimed by a religious organization jeopardizes values protected by the First Amendment. Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. *And there are neutral principles of law, developed for use in all property disputes, which can be applied without "establishing" churches to which property is awarded.* But First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice. * * * [T]he Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine. Hence, States, religious organizations, and individuals must structure relationships involving church property so as not to require

the civil courts to resolve ecclesiastical questions. [*Id.* at 449 (emphasis added).]

During the Term after *Hull* was decided, the Court had occasion to demonstrate and approve the appropriate application of "neutral principles of law" to a church property dispute.[8] In *Sharpsburg, supra*, a majority of the congregation in two individual Churches of God voted to withdraw from their association with the Maryland and Virginia Eldership of the Churches of God. The Eldership refused to recognize the withdrawal; it issued a "judgment" declaring the dissenting minorities in each church to be the "true congregation" thereof and then brought suit both to prevent the withdrawals and to have the minorities declared to be the rightful owners of the individual churches' property. *Sharpsburg, supra*, 249 Md. 650, 653-655, 241 A.2d 691, 693-694 (1968), *vacated and remanded*, 393 U.S. 528, *reaffirmed*, 254 Md. 162, 254 A.2d 162 (1969), *appeal dismissed*, 396 U.S. 367 (1970).

The Maryland Court of Appeals, by looking to the local churches' bylaws and corporate charters and to the Eldership's Constitution, determined, first, that the local churches were congregational in nature and wholly independent of the Eldership, at least insofar as their individual property was concerned. 249 Md. at 664, 671, 674, 241 A.2d at 699, 703, 705; 254 Md. at 170-175, 254 A.2d at 168-170. Having made that

[8] During the same Term it decided *Sharpsburg*, the Court denied, for reasons which of course were unstated, a petition for a writ of certiorari to review the Georgia Supreme Court's further decision in *Hull* after remand from this Court. *Presbyterian Church in the United States* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 396 U.S. 1041 (1970).

determination, the Maryland court then considered the language of the local church deeds, those churches' pertinent bylaws, and the applicable state property law, and concluded that in these particular congregational churches, a majority of their voting members was entitled to control of the churches' assets. 249 Md. at 656-660, 665-666, 677, 241 A.2d at 695-697, 700, 707; 254 Md. at 166-176, 254 A.2d 166-170.

On appeal, this Court first remanded the case for reconsideration in light of *Hull*, 393 U.S. at 528; however, after the Maryland Court of Appeals reaffirmed its decision on the same reasoning that underlay its original decision, 254 Md. at 164,178, 254 A.2d at 165, 171, this Court dismissed the second appeal "for want of a substantial federal question," 396 U.S. at 368. The *per curiam* dismissal of the appeal turned on the fact that the Maryland court had been able to resolve the church property dispute upon the basis of state property law, the church deeds, the corporate charters, and the portions of the Eldership Constitution dealing with ownership and control of church property, without having to confront any religious issue whatever. *Id.* at 367-368.

In a concurring opinion, Mr. Justice Brennan first reiterated that "[T]he [First] Amendment * * * commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine." *Id.* at 368, *quoting Hull, supra*, 393 U.S. at 449. He then described how the civil courts could, depending upon the circumstances of the given case, adhere to this command. First, they might be able simply to "enforce the property decisions" made by the appropriate decision-making

body within the church itself; second, they might find it necessary to apply "[N]eutral principles of law, developed for use in all property disputes," 396 U.S. at 370, *quoting Hull, supra*, 393 U.S. at 449, but *not* "if their application requires civil courts to resolve doctrinal issues," *Sharpsburg, supra*, 396 U.S. at 370; and third, they might be required to apply any specially-adopted state statutes which govern "church property arrangements in a manner that precludes state interference in doctrine." *Id.*

In any given case, the concurring opinion noted, the choice of the appropriate approach could be expected to be a function of which one would avoid the civil court's encroachment upon the church's exclusive right to resolve ecclesiastical issues. *See* 396 U.S. at 370 n.4. Thus, "neutral principles of law" would be inappropriate if, as in *Hull*, those principles would not fully resolve the dispute without the court, in addition, having to determine an ecclesiastical question. Similarly, deference to the decision of the relevant church governing body would be inappropriate if the very identification of that body could not be made without first deciding some ecclesiastical question. *Id.*

Respondents, the Superior Court of Bibb County, and the Supreme Court of Georgia have all read this Court's decisions in *Hull* and *Sharpsburg* for this proposition: in church property disputes, state civil courts may, if and when they so choose, reject the decision of a governing church court on an ecclesiastical question which is at issue in the dispute and, by applying "neutral principles of law," substitute their own judgment on that ecclesiastical question. For two fundamental reasons this

proposition, and its application in the present case, cannot be reconciled with the First Amendment.

First, in cases where seemingly "neutral principles of law" can be determined and might otherwise be sufficient to fully resolve church property disputes, those principles are in fact *not* "neutral," should not be applied, and cannot constitutionally be followed in the face of a contrary church court resolution of the dispute. Second, assuming *arguendo* that civil courts were constitutionally free to reject church court decisions and apply "neutral principles of law" to resolve ecclesiastical issues contrary to the church courts, in this case there were no such "*neutral*" principles upon which to base such a contrary resolution. Either of these reasons is sufficient to demonstrate the unconstitutionality of the Georgia courts' decisions. These reasons will be discussed in turn below.

A. Civil Courts Cannot Constitutionally Rely on "Neutral Principles" to Overrule an Authoritative Church Court Decision.

The courts below were of the view that they were not required to follow the deference-to-church-courts rule of *Watson* and *Serbian*, so long as they could dispose of the case pursuant to the "neutral principles" doctrine of *Hull* and *Sharpsburg*. What this view fails to recognize is that the doctrine of neutral principles is not an interchangeable substitute for, or an unfettered alternative to, the deference rule; it is a *necessary corollary* to that rule and comes into play *only if* there is no controlling church decision to which deference can be given.

Both the deference approach, as well as the neutral principles approach endorsed in *Hull* and *Sharpsburg*, are designed to ensure that church property disputes will be resolved without the civil courts unconstitutionally encroaching upon the churches' exclusive authority to decide ecclesiastical matters.[9] Thus, in a sense the deference rule is itself a "neutral principle of law." It provides a method for civil court resolution of church property disputes which will, at the same time, preserve the First Amendment's "neutrality" command that civil courts not interfere with or overrule church court decisions affecting the dispute. The necessary corollary to the rule—the *Hull-Sharpsburg* neutral principles approach—recognizes that there will not always be an identifiable hierarchical church court decision to which to defer. *See Sharpsburg, supra*, 396 U.S. at 370 n.4. When that is so, *as it was in Sharpsburg*, the civil courts are obliged to find another method of resolving the dispute (such as reference to formal title); however, that method, too, must strictly observe the constitutional command that civil courts not intrude upon the churches' exclusive ecclesiastical preserve. *Id.; Hull, supra*, 393 U.S. at 449-450.

Thus, this Court's decisions require deference when there is a hierarchical church court decision on the controlling issue. The neutral principles approach comes into play *only* when the deference approach will not resolve the dispute. The Georgia courts,

[9] *See generally* McKeag, *The Problem of Resolving Property Disputes in Hierarchical Churches*, 48 PA. BAR ASS'N Q. 281 (1977); Note, *Serbian Eastern Orthodox Diocese* v. *Milivojevich, The Continuing Crusade for Separation of Church and State*, 18 WM. & MARY L. REV. 655 (1977).

however, have treated the two approaches as if they were interchangeable, allowing a civil court to pick whichever one it wishes in any given case. In effect, those courts have used the neutral principles doctrine as a method of accomplishing, indirectly, what the deference rule forbids: the overruling of the governing ecclesiastical court on the very question at issue. In this, the Georgia courts have done much the same thing the Illinois courts did in *Serbian*.

In that case, the issue concerned the decision of the general church in a hierarchical structure to reorganize its American-Canadian Diocese into three new diocese. There, as here, this general church decision was an ecclesiastical one affecting control of church property. And there, as here, the state supreme court redetermined that ecclesiastical matter, "rel[ying] on purported 'neutral principles' for resolving property disputes which would 'not in any way entangle this court [the Illinois Supreme Court] in the determination of theological or doctrinal matters.'" *Serbian, supra*, 426 U.S. at 721, *quoting* 60 Ill. 2d 477, 505, 328 N.E.2d 268, 282 (1975). Even though the Illinois Supreme Court may have relied on "neutral principles" to overrule the church court decision, "[n]evertheless," said this Court, the effect of that reliance was to "substitute" the civil court's judgment for that of the authorized ecclesiastical tribunal. "This the First and Fourteenth Amendments forbid." 426 U.S. at 721.

We respectfully submit that the implications of *Watson, Hull, Sharpsburg* and *Serbian* for the present case are clear: a hierarchical church court resolution of an ecclesiastical matter is binding upon any civil court wherein that same ecclesiastical matter is at

issue; such civil court may not, either directly or indirectly—under the guise of "neutral principles," or otherwise—reject, ignore, overrule, or substitute its judgment for the church court's decision. Any other prescription, we submit, would invest civil courts with an unbridled, unprincipled discretion to choose at will between varying methods of resolving disputes in a religious context. Thus, if the Georgia court's treatment of this case were correct, it would mean that civil courts may, when they like, accept the governing church court's disposition of a doctrinal controversy; however, if that disposition would cause the particular property dispute to be resolved against the disputant whose doctrinal position the civil courts themselves would have endorsed, then the civil courts are entitled to follow "neutral principles" of law and thus reverse the outcome dictated by the church court decision.

By so describing the necessary results of the rulings below, we do not and need not attribute improper motives to any civil court. We mean only to illustrate the destruction of First Amendment "neutrality" threatened by the Georgia courts' standardless approach. This Court has declared that civil courts are constitutionally obliged to resolve church property disputes free of all entanglements in those disputes' underlying religious controversies. If that obligation is to be met, civil courts must not be free, willy-nilly, to accept or reject governing church court resolutions of those underlying religious controversies, and then to cite the appropriate theory—the deference-to-church-courts rule, or the "neutral principles" doctrine—as the particular outcome directs. A standard for choosing between the

two theories is required if the First Amendment's strict-neutrality command is to be obeyed.

Because of the need for such a standard, and because of the confusion that exists among the courts concerning their permissible discretion in the matter,[10] we urge the Court to make explicit in this case what we believe was implied in its previous decisions: that the civil courts must follow the pronouncement of a governing hierarchical church adjudicatory body upon an ecclesiastical question in any church-property dispute wherein that ecclesiastical question is at issue, and that other "neutral principles of law" may be resorted to only where such a governing church court decision is not

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[10] *Compare, e.g., First Presbyterian Church* v. *United Presbyterian Church in the United States*, 430 F. Supp. 450 (N.D.N.Y. 1977) (civil courts must defer to hierarchical church court decisions); *Presbytery of the Covenant* v. *First Presbyterian Church*, 552 S.W.2d 865 (Tex. Civ. App. 1977) (same), *with, e.g., Kelley* v. *Riverside Blvd. Independent Church of God*, 44 Ill. App. 3d 673, 358 N.E.2d 696 (1976) (First Amendment does not require deference to church court decisions); *Board of Church Extension* v. *Eads*, 230 S.E.2d 911, 919 n.6 (W. Va. 1976) (deference to hierarchical church court decision required *only* when "a case is not susceptible to the application of completely neutral principles of law"). *See generally* Annot., *Determination of Property Rights Between Local Church and Parent Church Body: Modern View*, 52 A.L.R. 3d 324 (1973).

The Court may wish to note, furthermore, that in *Mills* v. *Baldwin*, 362 So.2d 2 (Fla. 1978), the case virtually identical to this one in which the Supreme Court of Florida resolved the matter precisely opposite to its resolution by the Supreme Court of Georgia in this case, a petition for rehearing was denied on September 28, 1978 (the Florida Supreme Court's original decision is reprinted in the Appendix to our Reply Memorandum, filed August 24, 1978). We have been informed by counsel in *Mills* that a petition for a writ of certiorari will be filed with this Court in December 1978.

and will not be available. No other rule will prevent civil courts from setting aside church court decisions at will. No other rule will stop civil courts from accepting those decisions only if they choose, but rejecting them if for some unstated reason they prefer in a given case to follow an ironically-named "neutral" principle instead. No other rule will prevent civil courts from reviewing those ecclesiastical decisions on their merits and, having found those decisions unpalatable, adopting "neutral principles" to, in effect, reverse them on other grounds. In short, no other rule but the stated one accords with the First Amendment.

The rule, furthermore, would lend certainty to a now-unsettled area of the law,[11] would give needed guidance to civil courts regarding the appropriate approach to cases where two separate theories (deference and neutral principles) produce conflicting results, and would permit parties to religious disputes to direct their own conduct on the basis of that needed guidance. Indeed, if religious disputants were assured that their church adjudicatory bodies' decisions would be respected by the civil courts in *all* cases,[12] rather than from time to time being overturned on the basis of "neutral" principles, much inappropriate church-property litigation would surely be avoided.

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[11] *See* note 10, *supra*.

[12] The only exception to this rule would be where the controlling church court decision is shown to have been a product of "fraud" or "collusion," *Serbian*, *supra*, 426 U.S. at 713. As noted above, no such contention has been or could be made in this case.

Moreover, parties displeased with church court rulings should not have any reasonable expectancy—even apart from First Amendment considerations—that the civil courts will relieve them (on "neutral principles" grounds) from their obligation to comply with the church court's decision. Members of hierarchical churches—including respondents here—have, as a matter of simple contract and private association law, bound themselves to adhere to the decisions of those churches' ruling hierarchies:

> The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. *All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it.* [*Watson*, *supra*, 80 U.S. at 728-729 (emphasis supplied).]
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> * * *
>
> [T]he decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, *because the parties in interest made them so by contract or otherwise. Under like circumstances, effect is given in the courts to the determinations of the judicatory bodies established by clubs and civil*

associations. [*Gonzales, supra*, 280 U.S. at 16-17 (emphasis supplied) (footnotes omitted).]

Accord, Kedroff, supra, 344 U.S. at 122 (Frankfurter, J., concurring).

In *Serbian*, this Court concluded that decisions of adjudicatory bodies in private *religious* associations are, because of First Amendment considerations, entitled to even greater deference than decisions of similar bodies in nonreligious associations. *Id.* at 712-715. But even with the First Amendment aside, members of religious associations are surely entitled to *at least equal* deference for decisions of their private adjudicatory bodies. *See id.* at 728-730, 732 n.* (Rehnquist, J., dissenting). But there is no such equal deference under the Georgia courts' approach.

An approach which would allow civil courts to reject ecclesiastical church court decisions out of hand, so long as some "neutral principles" unrelated to that decision are thought sufficient to dispose of the resulting property dispute, would allow both judicial nullification of the parties' agreement to be bound by the church court decision, and wholesale denigration of the private association law which gave rise to that agreement. It would, moreover, work a wasteful, unwarranted disregard of a private adjudicatory process expressly designed to deal with the ecclesiastical issues at hand.[13] Such an approach, in our view, not only offends the First Amendment, but offends all other pertinent policy considerations in play when private associational decisions are before the courts.

[13] The importance of this private adjudicatory process was recognized by this Court as long ago as *Watson:*

(footnote continued)

We urge the Court to reject this approach outright, and to hold that "neutral principles of law" are to be used as an aid in deciding issues in church property disputes only when those same issues cannot be resolved by deferring to an authoritative church court decision. The contrary approach of the Georgia courts is arbitrary, inefficient, unjust, and, most importantly, unconstitutional.

B. There Were No "Neutral Principles" Upon Which the Georgia Courts Might Have Relied to Overrule the Authoritative Church Court Decision.

Even should the Court determine that, as a matter of constitutional law, the state courts are free to reject hierarchical church court decisions by relying on "neutral principles of law," here there were no such principles. Here the sole disputed issue

(footnote continued)

> Nor do we see that justice would be likely to be promoted by submitting those decisions to review in the ordinary judicial tribunals. Each of these large and influential bodies (to mention no others, let reference be had to the Protestant Episcopal, the Methodist Episcopal, and the Presbyterian churches), has a body of constitutional and ecclesiastical law of its own, to be found in their written organic laws, their books of discipline, in their collections of precedents, in their usage and customs, which as to each constitute a system of ecclesiastical law and religious faith that tasks the ablest minds to become familiar with. It is not to be supposed that the judges of the civil courts can be as competent in the ecclesiastical law and religious faith of all these bodies as the ablest men in each are in reference to their own. It would therefore be an appeal from the more learned tribunal in the law which should decide the case, to one which is less so. [80 U.S. at 729, *quoted in Serbian, supra*, 426 U.S. at 714 n.8.]

was quintessentially ecclesiastical: given the doctrinal schism within the Vineville Presbyterian Church, who should be recognized as the "true congregation" of that church? The church court determined that petitioners' group is that "true congregation." The Georgia courts, however, declared respondents to be the authorized representatives of that church. One will search the Georgia courts' opinions in vain for a specific reference to the "neutral principle" upon which this ecclesiastical determination rests.

The purported "neutral principle" upon which the Supreme Court of Georgia apparently based its decision in this case was that "more than a mere connectional relationship between the local and general church must exist to give rise to property rights in the general church." Pet. App. 15a-16a. That may be so, but it has nothing to do with the issue in this case. This case is not a dispute between a general and local church over which owns certain church property. All are agreed that the local church owns and is entitled to the beneficial use of the property. The only disagreement is over who represents that local church and is thus entitled to the use of its property.

Perhaps because the Georgia courts had elected to follow the "neutral principles" doctrine in this case, they wished to characterize the issues here in a manner similar to those presented in *Hull* and *Sharpsburg*, the cases upon which the "neutral principles" doctrine is based. Whatever the explanation, the result was that the Georgia courts badly mischaracterized the issues.

Unlike *Hull*, this case is *not* one in which the general church has attempted to take possession of property belonging to the local church. As petitioners have repeated over and over in this litigation[14]—always to no avail—the general church (TPCUS) is not a party to this suit; it has never claimed, and does not now claim, any property rights in the local church (VPC). Indeed, there has never been any dispute whatever that "formal title" to the property whose control is at issue here is in VPC. The only question to be answered is: Who is VPC? Unlike *Sharpsburg*, where a search of the pertinent deeds, charters, bylaws, and state property law could reveal that the local churches were *congregational* in nature and were thus entitled to dispose of their property by majority vote, the question "who is VPC?" cannot be answered by a similar search.

Hull and *Sharpsburg* are simply not analogous to this case, and the Georgia courts' attempts to recast the real issues here will not make them analogous. Rather, the keys to this case, and the analysis that should have guided the lower courts, are in *Watson*, *Kedroff*, and *Serbian*.

In those three cases, as here, there was no question concerning where title to the property at issue lay. In all three, again as here, it was with the local, as opposed to the general, church. *Watson*, *supra*, 80 U.S. at 681, 683; *Kedroff*, *supra*, 344 U.S. at 96 n.1; *Serbian*, *supra*, 426 U.S. at 723 n.15. Likewise, in all three, right to the use of the property followed

[14] *See, e.g.*, Supplemental Brief of Appellants, filed Jan. 27, 1978, at 2 ("No implied trust is involved * * *"); Reply Brief for Appellants, filed Jan. 16, 1978, at 5 ("No implied trust on behalf of the parent church is at issue here * * *").

simply *as an incident* of a purely ecclesiastical determination: in *Watson*, as in the present case, it followed from the naming of the true congregation, 80 U.S. at 720-722; and in *Kedroff* and *Serbian*, it was a function of the identification of the true clergy, 344 U.S. at 120-121, and 426 U.S. at 720, 723 & n.15. Significantly, in none of those three cases did this Court recognize or suggest that any "neutral principle" existed by which the civil courts might name the "true" members or "true" leaders of a church. As Mr. Justice Frankfurter stated in his concurring opinion in *Kedroff*: "this proceeding rests on a claim which cannot be determined without intervention by the State in a religious conflict." 344 U.S. at 121.

Understandably, then, the Georgia courts have offered no indication of the "neutral principle" governing their determination that respondents, rather than petitioners, represent the true congregation of VPC. We submit that there is no such principle.[15] Obviously, the Georgia courts had absolutely no authority to determine on any *doctrinal* basis that respondents' view was the "true" one. *Hull*, *supra*, 393 U.S. at 449-450. Neither could they determine that respondents, rather than petitioners, represented the group entitled to church membership. *Bouldin* v. *Alexander*, *supra*, 82 U.S. at 139-140; *Watson*, *supra*, 80 U.S. at 730. And they most assuredly could not, by fiat, "establish" VPC as a *congregational*, rather than a *hierarchical*, church, requiring that either its ecclesiastical or property decisions be determined by majority vote. *Kedroff*, *supra*, 344 U.S. at 122 (Frankfurter, J., concurring) ("It is said that an impressive majority * * * adhere to the party whose candidate New York enthroned * * *. Be that as it may, it is not a function of civil government under our constitutional system to assure rule to any religious body by a counting of heads"). *Compare Sharpsburg*, *supra*, 249 Md. at 674, 241 A.2d at 705 ("[T]hat polity [of the Eldership] in regard to the property of the local church, is congregational. Indeed, if the General Religious Law of the State sought to impose a presbyterial polity upon the religious corporations formed under it, there would be grave danger of a possible 'establishment of religion' * * *").

In regard to this latter point, it is important to note that the courts below simply assumed, and dictated, that the majority of every church's congregation in fact constitutes *the* congregation. Aside from the obvious First Amendment questions raised by such a categorical "majority rule" requirement, the requirement could in practice lead to fraud and collusion against hierarchical churches. As noted in the Brief of Amicus Curiae TPCUS, most Presbyterian churches have very small congregations—frequently as small as 25 or fewer members. Under an obligatory "majority rule" doctrine, 21

[15] To the extent that a "neutral principles" approach allows consideration of state statutes on these issues, the Georgia statutes fully support petitioners here. Section 22-5507 of the Georgia Code provides that title to property may be held by churches or religious societies, and that such property "shall be fully and absolutely vested in such church or religious society * * * *according to the mode of church government* or rules of discipline exercised by such churches or religious societies respectively" (emphasis added). Thus, in this case state statutory law, too, requires deference to church rules and the adjudicatory bodies established by "the mode of church government."

persons could join a local hierarchical church with a congregation of 20, promptly vote (21 to 20) to eject the now-minority members, and thereby summarily take over the church property (which in some instances could be very valuable indeed). The decisions below would countenance such a result even if the intruding group of 21 professed no religious beliefs whatever, and notwithstanding a hierarchical court church decision declaring the 20 members to be the true congregation of the church.

Thus, no "neutral principle" supports the result below. Instead, the Georgia courts simply took upon themselves an issue so altogether and utterly religious in nature that it will not admit to resolution by "neutral" principle. It could not be otherwise: a decision naming the "true" members of the church does not partake of civil law at all, neutral or otherwise. Such a decision is reached as a matter of pure faith and, on that basis, must be accepted by the civil courts.[16] *Serbian*, *supra*, 436 U.S. at 714. The Georgia courts' failure to do so renders their decisions unconstitutional.

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[16] According to *The Book of Church Order* §14-2, the church court decision which declared petitioners' group to be VPC's "true congregation" could have been issued "only for the purpose of serving Christ and declaring his will as it is related to his doctrine and law, to the good order of the Church and to the exercise of discipline." JA 48.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the decision of the court below should be reversed.

Respectfully submitted,

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